

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

DECISION AND ORDER

v.

1:17-CR-00095

RAUL EVERADO LEDESMA ABARCA,

Defendant.

Defendant Raul Everado Ledesma Abarca (“Defendant”) was charged along with co-defendant Armando Ernesto Abarca by Indictment returned on May 18, 2017, with the following three counts: (1) conspiracy to possess with intent to distribute, and to distribute 5 kilograms or more of cocaine in violation of 21 U.S.C. § 846; (2) possession of 5 kilograms or more of cocaine with intent to distribute in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A), and 18 U.S.C. § 2; and (3) maintaining a drug-involved premises in violation of 21 U.S.C. § 856(a)(1) and 18 U.S.C. § 2. (Dkt. 1). The Indictment included a forfeiture allegation seeking a monetary judgment in the amount of two hundred thousand dollars (\$200,000) in United States currency, pursuant to 21 U.S.C. § 853(a)(1), (a)(2), and (p). (Dkt. 1 at 3-4).

On August 23, 2018, co-defendant Armando Ernesto Abarca pleaded guilty to Count 1 of the Indictment, and as part of his plea agreement he agreed to the immediate criminal forfeiture pursuant to 21 U.S.C. § 853 of a monetary judgment in the amount of one hundred thousand dollars (\$100,000). (Dkt. 51 at 1, 8-10). Consistent with the plea

agreement, a preliminary and final order of forfeiture was entered on August 30, 2018 (Dkt. 54), and the Court sentenced co-defendant Armando Ernesto Abarca on December 12, 2018, incorporating the forfeiture provisions into the final judgment (Dkt. 66).

Defendant elected to proceed to trial. As part of its pretrial filings, the Government filed a memorandum explaining that the Court could determine the forfeiture money judgment without submitting the issue to the jury, and that in the event of conviction, the Government would be seeking a money judgment of \$100,000, which is a conservative estimate of the proceeds obtained by Defendant during the time frame of the conspiracy charged in Count 1 (September 2014 through September 2016). (Dkt. 84). Defendant agreed that the forfeiture issues did not need to be submitted to the jury.

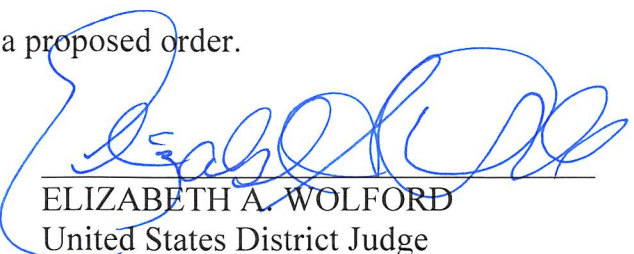
A jury trial commenced on May 31, 2019 (Dkt. 110), and concluded on June 12, 2019, when the jury returned a verdict of guilty on all three counts (Dkt. 129). As to Counts 1 and 2, the jury found Defendant responsible for at least 5 kilograms of cocaine. (*Id.*). On September 30, 2019, the Government filed a motion for a preliminary order of forfeiture seeking a monetary judgment in the amount of one hundred thousand dollars (\$100,000) against Defendant. (Dkt. 140). The Court issued a Text Order requiring any response in opposition to be filed by Defendant on or before October 14, 2019. (Dkt. 142). Defendant did not file any response in opposition.

Based on the evidence introduced during the trial, the Court agrees that \$100,000 is an extremely conservative estimate of the proceeds attributable to Defendant as a result of his cocaine trafficking. The evidence at trial established that the 43.25 kilograms of cocaine discovered in the storage locker in Amherst, New York, had a value of over one

million dollars. Moreover, witness Gerardo Ballardo credibly testified that he received a shipment of approximately 60 kilograms of cocaine in November 2014 from a source in Mexico, and approximately 25 kilograms of that shipment was supplied to Defendant at the cost of \$34,000 per kilogram. Mr. Ballardo also testified that he shared portions of two additional shipments of cocaine after the November 2014 shipment, one of which was approximately 55 kilograms of cocaine and the other was approximately 60 kilograms. A fourth shipment of 55.45 kilograms of cocaine was seized in January 2015. In addition, witness Mario Palonco Gonzalez credibly testified about 14-15 kilograms of cocaine per week that he obtained from Defendant and delivered in exchange for \$34,000 per kilogram for approximately three months.¹

Accordingly, pursuant to Federal Rule of Criminal Procedure 32.2, and 21 U.S.C. § 853(a)(1) and (p), the Court grants the Government's motion for a preliminary order of forfeiture for a monetary judgment of one hundred thousand dollars (\$100,000) in United States currency to be issued against defendant Raul Everado Ledesma Abarca. (Dkt. 140). The Government is directed to submit a proposed order.

SO ORDERED.



ELIZABETH A. WOLFORD
United States District Judge

Dated: October 17, 2019
Rochester, New York

¹ A certified trial transcript has not yet been prepared and therefore the Court's recitation of the evidence and testimony is based on its notes. In the event the Court's recitation of the evidence is inconsistent with the trial transcript, the certified transcript obviously controls.